

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.1963 OF 2004

Pradeep Bhalchandra Sawant]
Age 42 years]
Occ : Deputy Commissioner of Police]
R/at 18, Amba Bhavan, 3rd floor]
Scheme No.6, Road No.5, Matunga]
Mumbai 400 019.]
(Applicant detained at Yerwada]
Central Prison, Pune.] Applicant.

Versus

1. State of Maharashtra]
at the instance of]
Bund-Garden Police Station]
Pune (Special Investigation]
Team) in CR No.135/2002.] Opponent.
2. Central Bureau of Investigation]

Mr.Shekhar Naphade with Mr.M.K.Kochareka,
Mr.Sambhaji Mohite and Mr.Kiran Vagar for the
applicant.

Mr.V.B.Konde-Deshmukh, APP, for the State.
Mr.V.T.Tulpule with Mr.Raja Thakare and
Mr.A.M.Chimalkar for CBI/Respondent No.2.
Mr.D.N.Salvi for Union of India.

CORAM : D.G.DESHPANDE, J.

DATED : 27th August 2004.

ORAL ORDER

1. Heard Mr.Shekhar Naphade with Mr.Kocharekar, Mr.Sambhaji Mohite and Mr.Kiran Vagar for the accused/applicant & Mr.Vijay Tulpule with Mr.Thakare and Mr.Chimalkar for the CBI/Respondent No.1 and the APP, for the State.

2. The accused was Deputy Commissioner of Police, Unit V. He was arrested on 7.1.2004 in the C.R.No.135 of 2002 in one of the cases what is known as Telagi Scam registered at Bund Garden Police Station, Pune under MCOC Act and other offences. Mr.Naphade, appearing for the

accused/applicant, at the beginning of his argument, submitted Synopsis with an Index with reference to the specific case against this accused-DCP Sawant. There is no dispute or denial about this Index nor anything, in addition, was shown by Mr.Tulpule. This Index is prepared on the basis of charge-sheet submitted by the police. The Index refers to Charge 52 to Charge 70 which are as under :-

CHARGE 52 :- Transfer of 7 Cases to Crime Branch.

CHARGE 53 :- Poor Investigation by Crime Branch into the 7 Cases of fake stamps relating to accused AKL Telagi.

CHARGE 54 :- Shahunagar Murder case transferred to Dharavi Crime Branch because API Kamath was posted there.

CHARGE 55 :- DCP Sawant was incharge of M.C.O.C. Cell did not take cognizance of Organised

Crime Syndicate of accused AKL Telgi.

CHARGE 56 :- DCP Sawant did not invoke M.C.O.C. Act against the organized crime syndicate of accused AKL Telagi.

CHARGE 57 :- DCP Sawant, Incharge of M.C.O.C. at Cell failed to initiate stringent action against accused AKL Telgi.

CHARGE 58 :- Khanapur Incident.

CHARGE 59 :- Information by DIG Jaiswal to DCP Sawant on 3.1.03 about creature comforts to accused AKL Telagi.

CHARGE 60 :- DCP Sawant did not relieve deputationist API Kamath from Crime Branch. Disposal of Property by accused AKL Telagi.

CHARGE 61 :- Cuff Parade

Incidence.

CHARGE 62 :- With regard to Cuffe Parade incident DCP Sawant did not suspend Kamath.

CHARGE 63 :- Enquiry by DCP Sawant regarding to an anonymous complaint against accused PI Andhale.

CHARGE 64 :- DCP Sawant intentionally submitted only 29 cases instead of 48 cases, in the meeting of 26.5.2003.

CHARGE 65 :- Telephonic conversation. DCP Sawant did not co-relate Hyderabad seizure to that of Pune seizure.

CHARGE 66 :- Bhiwandi Seizure.

CHARGE 67 :- The custody of accused AKL Telagi was surrendered pre-maturely.

CHARGE 68 :- DCP Sawant recommended minor punishment to API Kamath for the lapses in the investigation of CR No.81/99

CHARGE 69 :- DCP Sawant making perfunctory enquiry in connection with the letter of Addl.DGP Karnataka Shri R.Shrikumar regarding bail granted to accused AKL Telagi in 4 cases.

CHARGE 70 :- DCP Sawant deliberately fed false information to DIG Bishnoi vide letter dt.29.7.2003. DCP Sawant informed the press on 16.4.2003 that the custody of accused AKL Telagi was with Mumbai police in 24.1.2003.

3. After hearing some submission of Mr.Naphade I asked Mr.Tulpule whether there is any direct evidence against this accused showing his involvement in this case and, Mr.Tulpule fairly and firmly told that there is no direct evidence at all against this accused and all the evidence is circumstantial from which a strong inference can be drawn that this accused was one of the conspirators with Telagi. My attention was drawn by Mr.Tulpule to Section 21 of the MCOC Act, 1999 which lays down that no person accused of an offence punishable under this Act shall, if in custody, be released on bail unless --

. (a) the Public Prosecutor has been given an opportunity to oppose such application; and;

. (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

4. In view of this specific provision of

law, it will be necessary upon this Court to give prima facie findings as to whether there is reasonable ground to believe that the accused is guilty of the offences charged; or whether he is not so guilty. The assessment of the circumstances will have to be, therefore, made with reference to the guilt of the accused and, the assessment will either be in favour of the accused or against the accused so far as his guilt is concerned. That is the mandate of Section 21 subsection (b) in particular.

5. The gravamen of the charges against the accused is that even though he was the DCP (Crime) and in-charge of Unit V, he entered into conspiracy with Telagi though not directly, but through API Kamath and, whatever was done by API Kamath was to help Telagi in different aspects of the matter in the cases concerning with him or involving him i.e. Telagi and when Kamath was doing all these liberally, this accused did not take proper and appropriate steps to control API Kamath or to take action against him and this inaction, connivance or indirect help as alleged by the prosecution was a part of conspiracy.

6. Mr.Naphade gave me a hierarchy in Mumbai Police Commissionarate so far as it relates to the accused DCP and the officers subordinates to him or working under him. As per this hierarchy, Commissioner of Police, Mumbai is the Head. Joint Commissioner of Police (Crime) is his subordinate. He was S.S.Vagal at the relevant time. Thereafter Additional Commissioner of Police (Crime) Rakesh Maria. Then DCP (Detection) (I) i.e. the accused and below the accused there was ACP (Detention) Crime Branch. He was Padwal. Then Sr.P.I. Unit V - Mr.Dal - He has been granted bail by the Sessions Court. Then PI Chavan, PI Khade (Supervisory Officers of the Investigation of a case) and, thereafter, four officers API Kamat (arrested, not on bail); API Agarkar; PSI Bhosale; PSI Mane and, then certain staff.

7. Mr.Naphade pointed out that API Kamath was the chief conspirator and, since there was no direct evidence against this accused about his involvement in the conspiracy in any manner whatsoever, it was necessary to find out whether circumstantial evidence collected by the

Investigating Agency was sufficient to come to conclusion that this accused was guilty of offence under MCOC Act or other offences.

8. The Charge Nos. 52 and 53 pertain to transfer of 7 cases to Crime Branch by the accused with a view to help API Kamath to weaken the cases so that ultimately the main accused Telagi gets benefit out of the same. In this regard, Mr.Naphade stated that DCP i.e. the accused had absolutely no powers whatsoever to transfer the cases and those powers were vested to the Commissioner of Police and Joint Commissioner of Police (Crime) and under no circumstances the accused could have powers to transfer any of those cases and, in fact he was not responsible, directly or indirectly, to the transfer of those cases. One of the seven cases was C.R.No.123/2001 under Section 302 where one Christopher, who was the associate of accused AKL Telagi, was murdered. This case was transferred not by the accused but by the Joint Commissioner of Police, Crime vide official order dated 6.7.2002 and the investigating officer was PSI Mane and not API Kamath or PI Dal. Not a single document was shown to me by Mr.Tulpule from which

it can be inferred that this accused has given orders for transferring all those seven cases.

9. Charge No.53 is of poor investigation by the Crime Branch in the aforesaid 7 cases. I do not think that this Court can, while those 7 cases are investigated or being investigated, pass any remark whether there is any poor investigation and it is done deliberately by this accused or with the help or assistance or connivance and negligence of this accused. Finding fault with the investigation of those 7 cases and finding lacunas will ultimately benefit the accused in those cases.

10. Charge No.54 is about transfer of C.R.No.123/2001 i.e. Christopher Murder Case from Shahunagar Police Station to Detection Crime Branch, Unit - V, Dharavi. I have already noted that this case was transferred vide official order dated 6.7.2002 and copy of the information was submitted to the Joint Commissioner of Police (Crime); The Additional Commissioner of Police, Central Region, Mumbai and other concerned officers. The reason for transfer was that six police stations falls under the jurisdiction of

one unit of detection crime branch, and if any serious offence is committed in the jurisdictions of the police station then it is marked to the concerned unit. (Christopher Murder case) C.R.No.123/2001 was transferred to Detection Crime Branch, Unit - V, Dharavi, as Shahunagar Police Station falls under the jurisdiction of Dharavi Unit of Detection Crime Branch and not because of Sr.PI Dal and API Kamath were posted there. It is important to note that PSI Mane was the IO and not API Kamath.

11. Charge Nos.55, 56 and 57 is about not invoking MCOC Act against Telagi or failure to take stringent action against Telagi. First reply in this regard was that DCP Sawant had no powers to invoke MCOC Act and secondly, this accused had strongly recommended that MCOC Act be invoked as per his noting dated 16.2.2003. No denial came from Mr.Tulpule in this regard.

12. Charge No.58 is that accused Telagi was taken to Khanapur by API Kamath. Therefore, it is alleged that they had sumptuous dinner or meal when Briyani was served and it was API Kamath who

had taken Telagi to Khanapur with the permission of DCP Sawant - the accused. Nothing was shown i.e. no authorisation of any kind either oral or documentary was produced nor any statements of any of the witnesses who testifies that it was this accused who authorized API Kamath to take Telagi to Khanapur, is produced.

13. So far as the incident of taking accused Telagi to Khanapur is concerned, the copy of supplementary charge sheet was given to me by Mr.Tulpule in a spiral binding. It starts from Page 1 to Page 108. The accusations in respect of this particular aspect are there in Para 58. However, nowhere the date of taking Telagi to Khanapur is mentioned, nor it was pointed out to me in the argument. Mr.Naphade pointed out that the accused was on official leave from 8.11.2002 to 14.11.2002 and if API Kamath has taken Telagi to Khanapur during this period then in the absence of concrete proof and authorisation, no inference could be drawn that this could be done by API Kamath with the consent and connivance of the accused.

14. At this juncture Mr.Tulpule pointed out

that API Kamath carried out a raid at Hyderabad without any permission from the present accused or his superior officers. He also pointed out that no officer can go out of State for investigation unless he has been specifically authorised in that regard. My attention was drawn by Mr.Tulpule to the Rules in that regard. It is Government Circular Dated 28.6.2001 issued by the Commissioner of Police, Mumbai. Rule No.1 specifically states that before deputing police officer out of the State for investigation or for other official purposes, written permission of the DCP should be obtained. Panchanama of seizure at Hyderabad was shown to me by Mr.Tulpule so also the statement of one of the witnesses Kishor Dhingra was shown and, from the panchanama and this statement of Kishor Dhingra recorded on 25.7.2003 it was tried to be urged that this raid at Hyderabad was a farce by API Kamath. He has committed so many illegalities in conducting the raid which will ultimately affect the credibility and authenticity of the raid and the documents prepared in that regard because witness Kishor Dhingra has stated the manner in which API Kamath obtained his service, how he was taken to Hyderabad by plane; how they met Telagi and how

the raid was conducted; certain huge quantity of stamps were seized and thereafter some stamps were separated. Mr.Tulpule also pointed out that no help or assistance of the police at Hyderabad was taken by API Kamath, nor they were intimated about this raid and, therefore, the entire raid becomes illegal.

15. From the aforesaid document, the manner in which the raid was conducted and the statement of Kishor Dhingra - the panch witness was recorded on 25.07.2003 , it appears that the raid is prima facie illegal. However there is nothing on record to show that this accused had authorised API Kamath to carry out the raid.

16. In this regard my attention was drawn by Mr.Naphade to the statement of Ramakant Padwal dated 15.11.2003 wherein he has stated that PI Dal was the PI in-charge of Unit V of the Crime Branch. API Kamath was attached to the said Unit and PI Dal and API Kamath have direct contact and thick relations with DCP Vagal. Therefore, they i.e. PI Dal and API Kamath were always on direct contact with DCP Vagal and in important matters or important decisions Padwal was neglected and

PI Dal and API Kamath used to meet DCP Padwal. Further in his statement Padwal has stated that accused Telagi was in Bangalore Jail, he i.e. Padwal did not authorise API Kamath for going to Bangalore. Similarly no application was made by API Kamath for going to Hyderabad for investigation, nor he was informed about the same. He has further stated that PI Dal was the incharge of the Unit and it was the responsibility of PI Dal to keep watch on the activities of his subordinates and also it was his responsibility to keep control over the investigation.

17. From this statement of Padwal, Mr.Naphade contended that even, according to Padwal, the present accused was not concerned with the day to day activities of Unit V and API Kamath who was much below in rank than the present accused was not bound to report to DCP-the present accused, nor seek his instructions, directions or orders. The whole responsibility was of PI Dal who has been granted bail by the Sessions Court in spite of this background.

18. At this juncture Mr.Naphade drew my attention to the bail order passed in respect of PI Dal by the Special Judge, Pune on 1st July 2004 Below Exhibit 445 in Special Case No.2 of 2003 to show that regarding Khanapur incident and the raid at Hyderabad the entire blame was tried to be put on PI Dal. The Special Judge therefore came to the conclusion that no iota of evidence was produced to show that PI Dal was aware of the illegalities committed by API Kamath or that he has taken consent, sanction or order from PI Dal before doing so. If that is the case with PI Dal and he has been granted bail by the Special Judge, then this accused, who is much above than PI Dal, cannot be held responsible for the illegalities committed by API Kamath.

19. I have already noted that there is no direct evidence showing involvement of this accused with Telagi. There is no evidence of meeting of this accused with Telagi nor any conversation, nor any talk, no evidence of giving any promise by this accused to Telagi in furtherance of conspiracy, no evidence of this accused giving any concession or benefit directly

or indirectly to Telagi, no evidence of accused receiving any benefit from Telagi either by way of monetary benefit or in the form of money or in the form of favours.

20. Nobody much less police officer of the rank of DCP would be party to such a conspiracy without any gains and nobody could remain aloof or away from such a conspiracy of wide repercussion and consequences without leaving any prints of his involvement. The case of the prosecution does not throw any light on these angles, nor through arguments Mr.Tulpule could point out as to what was the motive of the accused to join the conspiracy, what he was to gain from the conspiracy or what proof he has left behind showing his involvement in the conspiracy. There are no answers to the questions.

21. Mr.Tulpule, in order to show that the accused was involved in the conspiracy with Telagi, drew my attention to a raid at Bhiwandi i.e. Charge No.66 wherein fake stamps worth Rs.827/- crores were seized by API Kamath. Mr.Tulpule contended that in fact this seizure

was at the instance of and from Telagi who was in the custody of police but without showing so it was shown in the name of some-one-else to shower the benefit on Telagi. I find that this submission totally baseless and without substance. If the accused was to use his influence or pressure through API Kamath and was to act in furtherance of his conspiracy with Telagi to shower the benefit on Telagi then, firstly he would not have ordered to raid in Bhiwandi godown; secondly, no evidence would have been collected of the recovery of incriminating articles much less the recovery of more than Rs.800/- crores fake stamps and, thirdly, no documentary evidence would have been prepared in that regard. The real conspirator would have destroyed everything that was found in the Bhiwandi godown without making and creating record but showing recovery of more than Rs.800/- crores fake stamps, preparing documents, is even at this stage an action taken bonafide with no desire favour Telagi or falsely implicate some-one-else.

22. In the written submission given by Mr.Tulpule, three questions are posed before the

Court, they are :-

1] Can this Court at this stage accept an argument that turns the entire case on its head?

2] Can the Court come to the conclusion at this stage, that the Pune investigation is tainted?

3] Can the Court really conclude at this stage that the Applicant and his fellow accused are heroes and that those who implicate them are in fact agents of Telgi?

Though the Court is not bound to answer such questions I am firmly giving reply that the Court is not going to do anything that would turn the entire case on its head. The Court is not going to give any conclusion that Pune investigation is tainted, nor the Court is going to held that accused applicant is the hero and those who are implicate them are in fact agents of Telgi. The Court is going to find out whether there is any prima facie material to hold that the accused can

ultimately be held guilty as required by Section 21 of the MCOC Act, and my answer is in the negative in respect of all the charges from Charge No.52 to Charge No.70.

23. In none of the charges from Charge No.52 to Charge No.70, as reproduced by me in summary manner on the basis of Index given by Mr.Naphade and about which there is no dispute, there is any evidence, direct or indirect, showing involvement of this accused. There is no evidence to show that he gave any instructions to API Kamath, directly or indirectly, to give favours to Telgi; there is no evidence of any conversation, direct or indirect; there is no evidence regarding meeting between this accused and API Kamath, direct or indirect in respect of any of these charges.

24. In short, the prosecution wants the Court to infer that because the accused was DCP, he must be held responsible for all the dereliction of duty by API Kamath or for the favours shown or given to Telgi by API Kamath. The question is of

not drawing inference, but the question is of finding whether there is material sufficient to hold that the accused would be ultimately held guilty of the charges levelled against him and, from the submissions made by Mr.Tulpule and even from his written submission no such inference can be drawn.

25. It is true that if API Kamath had shown favours to Telgi, API Kamath should have been suspended forthwith. But there is 5/6 days delay in that regard in following the directions given by the Commissioner of Police R.S.Sharma to this accused. That delay alone cannot be held to establish the existence of conspiracy in which the accused has taken part.

26. One of the important charges is Charge No.67 i.e. about handing over the custody of Telgi pre-maturely to Karnataka Police. When Telgi was required in any other case, then in this regard, Mr.Naphade pointed out that, Bund Garden Police was repeatedly informed and asked as to whether they want custody of Telgi. But there was no response from them. Even otherwise surrendering Telgi to Karnataka Police was not

equivalent to discharge Telgi from any of the cases pending against him nor it was equivalent to making Telgi available for further investigation. If other police or Bund Garden Police required custody of Telgi, nothing prevented them in making for that from the concerned Court.

27. Out of the aforesaid charges from Charge 52 to Charge 70 one more charge requires consideration and that is Charge No.61 and 62 that is referred to as Cuffe Parade incident. Accused Telgi was found along with three constables in 7 Cuffe Parade flat. The explanation given by API Kamath in that regard that he has taken those constables with him for laying a trap for wanted accused Tabrej Telagi and the constables were armed with revolvers. ACP Padwal has stated in his statement recorded by SIT that API Kamath and constables had come to his office in the evening of 9.1.2003 and they had informed him that they were going to lay a trap for a wanted accused at 7 Cuffe Parade. Regarding this incident also, there is no evidence, direct or indirect, of connivance, help

or support to API Kamath or to Telgi by the present accused. There is nothing on record to show that this accused was even aware of Telgi being taken to 7, Cuffe Parade by API Kamath. I have already referred to the statement of ACP Padwal who has stated that API Kamath has direct contact to Joint CP Vagal.

28. My attention was drawn by Mr.Tulpule to the statement of API Agarkar dated 24.1.2004 wherein API Agarkar has stated that this accused called him, PI Dal, PSI Bhosale and PSI Mane in his office and warned them that no news should be given to the Press about suspension of API Kamath and about Telgi and, if they do so, he will finish them because he is politically and economically very strong. Some other threats were also given by this accused to API Agarkar. In this connection Mr.Naphade pointed out that the statement of Agarkar was recorded on 21.6.2003 but in that statement he has not made any such allegations which he made in his statement dated 24.1.2004.

29. It is pertinent to note that in his

statement dated 24.1.2004 API Agarkar refers to an incident of February which means it is February 2003 and if API Agarkar does not make any allegation about the threats in his statement recorded on 21.6.2003 then not much reliance can be placed upon this statement of 24.1.2004 at least for the purpose of bail.

30. The main charge against this accused is under MCOC Act. Section 3(2) of the MCOC Act reads as under :-

"Whoever conspires or attempts to commit or Advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs."

Therefore in order to show that a case against

accused under Section 3(2) of the MCOC Act exists, the prosecution must prove that the accused was the conspirator or attempted to commit any offence or advocated commission of offence, abetted the commission of offence or knowingly facilitated the commission of offence or that he committed any act preparatory to the commission of offence. In this case, there is no prima facie evidence to fulfil any of the aforesaid requirements and to attract the aforesaid provisions against the accused much less prima facie evidence to held that the accused can be held guilty for these offences or lapses.

31. It will be therefore clear that in respect of almost all the charges the prosecution wants to connect the accused with the serious crime because of the illegalities committed by API Kamath and because API Kamath was working under him. It might be that this accused was not that much deligent as was expected of a superior officer of the rank of DCP but consideration while granting bail is, whether the accused can be held guilty on the basis of evidence tendered. And my answer is in the negative. Therefore, for

all these reasons, this bail application is required to be allowed.

32. It is clarified for all those concerned i.e. the trial court and subordinate courts that the observations made hereinabove are only for the purpose of bail and they are not to be treated as the observations to be helpful either for this side or that side during trial. The trial Court should not be influenced in any manner whatsoever by the aforesaid findings or observations.

33. For the aforesaid reasons I pass the following order :-

:ORDER:

1. The application is allowed.
2. The accused/applicant is granted bail and he be released on his P.R. bond of Rs.25,000/- [Rupees Twenty Five Thousand only] with one solvent surety in the like amount or cash in lieu of surety.

3. He will not leave Bombay without permission of this Court except going to Pune if he has any case to attend there.

4. He will surrender his passport, if any, to the Investigating Agency within two weeks after he is released.

5. Certified copy expedited.

[D.G.DESHPANDE]

27/08/2004.

JUDGE.

. After this order was pronounced Mr.Tulpule, appearing for the CBI, prays for staying the operation of this order for two weeks. If, the bail is granted after considering all the facts and when the accused is permanent resident of Bombay and the responsible Government Officer, at least before this case, and there is no likelihood of his leaving Bombay and not making him available to the police, if they require, the prayer for stay is rejected.

[D.G.DESHPANDE]

27/08/2004.

JUDGE.